

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

EMERSON WEBB, and all others	)	
similarly situated,	)	NO. CV-09-0081-LRS
	)	
Plaintiff,	)	<b>ORDER GRANTING DEFENDANT</b>
-vs-	)	<b>UNIFUND'S MOTION TO DISMISS</b>
	)	
UNIFUND CCR Partners, et al.,	)	
	)	
Defendants.	)	
	)	

**BEFORE THE COURT** is Plaintiff Emerson Webb's Motion to Strike Portion of DR 12, "Declaration of John Munding," (**Ct. Rec. 15**), and Defendant Unifund CCR Partners' ("Unifund") Motion to Dismiss (**Ct. Rec. 10**). A telephonic hearing was held September 10, 2009. Michael Kinkley participated on behalf of the Plaintiff; John Munding and Charles Huber participated on behalf of Defendants. The Court having considered the oral and written argument of counsel, enters this order to supplement and memorialize the oral rulings of the Court.

**I. BRIEF STATEMENT OF THE CASE**

This is a Fair Debt Collection Practices Act ("FDCPA") Class Action which sets forth three causes of action: 1) FDCPA; 2) Washington Consumer Protection Act ("WCPA") violation; and 3) Washington Collection Agency Act ("WCAA"). This is a lawsuit wherein Plaintiff's allegations arise

1 from a state-court collection lawsuit brought by Defendant Unifund. In  
2 the state collection action, Unifund sought interest on the Plaintiff's  
3 debt at the statutorily prescribed rate. Unifund also provided the sworn  
4 affidavit of its employee, Defendant Kim Kenney, which stated that  
5 Plaintiff owed the debt and that Unifund had the right to collect the  
6 debt. Unifund also sought a \$650.00 attorney's fee. A default judgment  
7 was entered in state court in Defendant Unifund's favor for \$8,666.80  
8 (principal plus interest) and the judgment specifically awarded Unifund  
9 \$650.00 for reasonable attorney's fees.

## 10 II. DISCUSSION

### 11 A. Defendant's Motion to Dismiss

12 The Plaintiff has various contentions in his Complaint which are  
13 briefly summarized as follows: 1) the state court judgment is void or  
14 voidable; 2) the service of process was improper in the state court  
15 lawsuit; 3) Ms. Kenney's affidavit was signed lacking personal knowledge;  
16 4) Defendant Unifund was not authorized to collect debts in Washington  
17 state; 5) attorney's fees in the amount of \$650.00 in the state court  
18 judgment were improper; and 6) the debt sought through the state court  
19 lawsuit was not owed or not owed in the amount stated.

20 Defendant Unifund asserts that any alleged damage claimed by  
21 Plaintiff is inextricably intertwined with the state court judgment and  
22 is barred by the *Rooker-Feldman* doctrine. Further, Defendant Unifund  
23 lawfully sought to collect a debt and was properly licensed as an  
24 out-of-state collection agency. Finally, Defendant Unifund alternatively  
25 argues that Plaintiff's contentions and claims could have and should have  
26 been brought in the state collection action and are barred by the  
doctrine of res judicata.

**B. Plaintiff's Motion to Strike Munding Declaration**

Plaintiff moves to strike the Declaration of John Munding based on his alleged lack of personal knowledge. Defendant Unifund responds that it is unnecessary for Mr. Munding to have personal knowledge of the contents of the documents and that Defendant is not relying on Munding to prove truth of matter asserted. Rather, as Defendant Unifund notes, Munding simply attests to his personal knowledge that the documents are true and correct copies of official public records of which this Court may take judicial notice.

Defendant Unifund additionally asserts that *Rosales v. Unifund CCR Partners*, 2008 WL 5156681 (N.D.Ill. Dec. 5, 2008) stands for the proposition that an affidavit may be excluded if truly lacking in personal knowledge, but such lack of knowledge does not give rise to an FDCPA claim.

**C. Legal Standard - Motion to Dismiss**

In reviewing a motion to dismiss under Fed. R. Civ. P. 12(b)(6), a court may grant a dismissal for failure to state a claim "if it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief." *Keniston v. Roberts*, 717 F.2d 1295, 1300 (9th Cir. 1983) (quoting *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)). "Dismissal can be based on the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable theory." *Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1988).

On a motion to dismiss, material allegations of the complaint are taken as admitted and the complaint is to be liberally construed in favor of the plaintiff. *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969), reh'g

1 denied, 396 U.S. 869 (1969); *Sherman v. Yakahi*, 549 F.2d 1287, 1290 (9th  
2 Cir. 1977). *Haines v. Kerner*, 404 U.S. 519 (1972), reh'g denied, 405  
3 U.S. 948 (1972). To the extent matters outside the Complaint are  
4 considered by the Court, a motion to dismiss should be treated as a  
5 motion for summary judgment under Fed. R. Civ. P. 56. Although Defendant  
6 Unifund has submitted declarations in this case, the Court finds that the  
7 declarations simply reference state court documents as being true and  
8 correct copies of official public records, thus adding nothing factual  
9 to the record. Further, the Court takes judicial notice of the  
10 supporting documents introduced through the Munding declaration.  
11 Therefore, the motion is properly considered under the Rule 12(b)(6)  
12 standard.

13 **IT IS ORDERED** that:

14 1. Plaintiff's Motion to Strike, **Ct. Rec. 15**, is **DENIED** for the  
15 reasons stated above and at the hearing.

16 2. Defendant Unifund's Motion to Dismiss, **Ct. Rec. 10**, is  
17 **GRANTED** based on the applicability of the *Rooker-Felman* doctrine<sup>1</sup> and  
18 for the reasons stated on the record.

19 3. The District Court Executive is directed to:

20 (a) ENTER THIS ORDER;

21 (b) PROVIDE A COPY TO COUNSEL OF RECORD;

22 (c) ENTER JUDGMENT CONSISTENT WITH THIS ORDER; and

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23  
24 <sup>1</sup>*District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462  
25 (1983). The *Rooker-Feldman* doctrine, as recently described by the Supreme  
26 Court, bars federal actions "brought by state-court losers complaining  
of injuries caused by state-court judgments rendered before the district  
court proceedings commenced and inviting district court review and  
rejection of those judgments." *Exxon Mobil Corp. v. Saudi Basic Indus.  
Corp.*, 544 U.S. 280, 284 (2005).

1 (c) **CLOSE THIS FILE.**

2 IT IS SO ORDERED. The District Court Executive is directed to  
3 enter this order and to provide copies to counsel.

4 DATED this 21st day of September, 2009.

5  
6 ***s/Lonny R. Suko***

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8 LONNY R. SUKO  
9 CHIEF UNITED STATES DISTRICT JUDGE  
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